

Prefiled Written Testimony of
Donald W. Patrick, M.D., J.D.
Executive Director, Texas Medical Board
Before the
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
U.S. House of Representatives
June 6, 2006

EXECUTIVE SUMMARY

- The practice of medicine is the diagnosis, treatment or offer to treat a disease, disorder, deformity, or injury by any method by a person who either publicly professes to be a physician or who charges for the services.
- Diagnosis is the determination of the nature of a disease -- the art of distinguishing one disease from another
- A diagnosis is properly made after considering a patient's history, performing a physical examination, and reviewing imaging studies and other diagnostic tests.
- The determination of the nature of a disease by reviewing only an X-ray may be a medically incomplete diagnosis, but it is a diagnosis, nonetheless.

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I am Dr. Donald Patrick, and as Executive Director of the Texas Medical Board, I represent the state agency that licenses and regulates Texas physicians. Currently, more than 55,000 physicians hold Texas licenses. We investigate complaints and the board takes disciplinary actions when appropriate. Last year, the Texas Medical Board took 304 disciplinary actions against licensed Texas physicians.

I would like to comment on several broad issues that are being considered by your committee. The first is the definition of the practice of medicine. The Texas Medical Practice Act defines the practice of medicine as the diagnosis, treatment, or offer to treat a disease, disorder, deformity, or injury by any method by a person who either publicly professes to be a physician or who charges for the services. [see §151.002(a)(13), Texas Occupations Code]

Diagnosing a disease is clearly within the definition of the practice of medicine. The Medical Practice Act requires anyone who practices medicine in Texas or on patients in Texas to be licensed by the Texas Medical Board.

This raises the second issue that I want to address: What constitutes a diagnosis? The commonly understood definition of diagnosis, as stated in medical dictionaries, is the determination of the nature of a disease and the art of distinguishing one disease from another [see Stedman's Medical Dictionary and Dorland's Illustrated Medical Dictionary]. I suggest that diagnosis is properly made after considering a patient's history, performing a physical examination, and reviewing imaging studies and other diagnostic tests.

The history may be either oral or written and physicians commonly use a form for past history and occupational history as a questionnaire completed by the patient or a trained office assistant. Ideally, the physician personally takes the present illnesses and review of systems history information. The delegation of this responsibility creates risks of error that every physician recognizes (or should recognize).

The physical examination may be complete or focused. For any lung ailment, a physical examination should include vital signs; observation of the patient's breathing; palpation of the chest wall for abnormal adventitious rubs and symmetrical chest rising and falling; percussion to detect increased or decreased resonance; and listening to the heart and lungs for equality of volume and character of sounds, including râles, rhonchi, or wheezes.

The next step is to get a chest X-ray and pulmonary function tests, as indicated.

Based on all of this information, the physician arrives at a diagnosis. This is the proper procedure for making a diagnosis. It does not mean, however, that making a diagnosis with less

than the history, physical examination, and imaging and diagnostic studies, if indicated, is not failing to make a diagnosis – it is just doing it improperly. The determination of the nature of a disease by reviewing only an X-ray may be a medically incomplete diagnosis, but it is a diagnosis, nonetheless.

Another issue raised in your committee's inquiry is the doctor-patient relationship. More specific to your inquiry is the question: What duty does a physician have to inform a patient of a diagnosis? We believe that a physician has a duty to inform patients of diagnoses reached by that physician unless there is a clear, signed release by the patient that explicitly states that the patient acknowledges there is no doctor-patient relationship. Such a release is common for "independent reviews" in workers' compensation cases. These releases are also common in cases in which an expert witness examines a plaintiff for an attorney in a medical malpractice case. The doctor-patient relationship is implied unless there is an express disclaimer signed by the patient.

I will be glad to try to respond to any questions you may have.